

# Order

Michigan Supreme Court  
Lansing, Michigan

May 6, 2005

125950 & (99)  
125954, 125955

DETROIT EDISON COMPANY,  
Appellant,

v

SC: 125950  
COA: 237872  
MPSC: 00-012134

Clifford W. Taylor  
Chief Justice

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman  
Justices

MICHIGAN PUBLIC SERVICE COMMISSION,  
MICHIGAN ALLIANCE FOR FAIR  
COMPETITION, MIDLAND COGENERATION  
VENTURE LIMITED PARTNERSHIP, ENERGY  
MICHIGAN, INC., ASSOCIATION OF  
BUSINESSES ADVOCATING TARIFF EQUITY,  
ALPENA POWER COMPANY, EXELON ENERGY  
COMPANY, WISCONSIN PUBLIC SERVICE  
COMMISSION, UPPER PENINSULA POWER  
COMPANY, WISCONSIN ELECTRIC POWER  
COMPANY, and NORTHERN STATES POWER  
COMPANY WISCONSIN d/b/a XCEL ENERGY,  
Appellees.

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MICHIGAN ELECTRIC COOPERATIVE  
ASSOCIATION,  
Appellant,

v

SC: 125954  
COA: 237873  
MPSC: 00-012134

MICHIGAN PUBLIC SERVICE COMMISSION,  
MICHIGAN ALLIANCE FOR FAIR  
COMPETITION, MIDLAND COGENERATION  
VENTURE LIMITED PARTNERSHIP, ENERGY  
MICHIGAN, INC., ASSOCIATION OF  
BUSINESSES ADVOCATING TARIFF EQUITY,  
ALPENA POWER COMPANY, EXELON ENERGY  
COMPANY, WISCONSIN PUBLIC SERVICE  
COMMISSION, UPPER PENINSULA POWER  
COMPANY, WISCONSIN ELECTRIC POWER  
COMPANY, and NORTHERN STATES POWER  
COMPANY WISCONSIN d/b/a XCEL ENERGY,  
Appellees.

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CONSUMERS ENERGY COMPANY,  
Appellant,

v

SC: 125955  
COA: 237874  
MPSC: 00-012134

MICHIGAN PUBLIC SERVICE COMMISSION,  
MICHIGAN ALLIANCE FOR FAIR  
COMPETITION, MIDLAND COGENERATION  
VENTURE LIMITED PARTNERSHIP, ENERGY  
MICHIGAN, INC., ASSOCIATION OF  
BUSINESSES ADVOCATING TARIFF EQUITY,  
ALPENA POWER COMPANY, EXELON ENERGY  
COMPANY, WISCONSIN PUBLIC SERVICE  
COMMISSION, UPPER PENINSULA POWER  
COMPANY, WISCONSIN ELECTRIC POWER  
COMPANY, and NORTHERN STATES POWER  
COMPANY WISCONSIN d/b/a XCEL ENERGY,  
Appellees.

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The motion for leave to file supplemental brief is GRANTED. On order of the Court, leave to appeal having been granted and oral arguments of the parties having been considered by the Court, pursuant to MCR 7.302(G)(1), we VACATE only Part II(B) of the March 2, 2004 Court of Appeals opinion, in which the Court of Appeals erroneously concluded that a generally applicable industry code of conduct may be promulgated through a contested case proceeding. The conclusion by the Court of Appeals in Part II(B) is contrary to MCL 24.203(3) and 24.207 as well as existing case law, e.g., *Detroit Base Coalition for the Human Rights of the Handicapped v Dep't of Social Services*, 431 Mich 172 (1988); *Michigan Electric & Gas Assoc v Public Service Comm*, 252 Mich App 254 (2002). Further, the issue addressed in Part II(B) of the Court of Appeals opinion is now moot in light of 2004 PA 88, in which the Legislature amended MCL 460.10a(5) and ratified the code of conduct established by the Public Service Commission. In all other respects, leave to appeal is DENIED, because we are no longer persuaded that the questions presented should be reviewed by this Court.

CAVANAGH, J., concurs in part and states as follows:

Because of 2004 PA 88, the issue addressed in Part II(B) of the Court of Appeals opinion is now moot; therefore, I concur only with the determination that leave was improvidently granted and should be denied.

KELLY, J., joins the statement of CAVANAGH, J.

10503



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 6, 2005 Corbin R. Davis  
Clerk